

State of Maine
Office of Securities
121 State House Station
Augusta, Maine, 04333-0121

In Re:

Warren C. Spencer

Consent Order
09-023

This is an order of the Securities Administrator issued under 32 M.R.S.A. § 16412 with the consent of Warren C. Spencer ("Spencer") (CRD #3013294). Spencer neither admits nor denies the findings of fact or conclusions of law set forth below, but agrees to the entry of this Consent Order and waives his right to a hearing and to judicial review.

I. FINDINGS OF FACT

1. On February 23, 2010, the Securities Administrator issued a Notice of Intent to revoke Spencer's agent and investment adviser representative licenses; censure Spencer; bar Spencer from associating with any broker-dealer, investment adviser, or issuer in Maine; and impose a civil penalty of \$5,000 per violation.
2. The time for Spencer to request a hearing has not yet expired.
3. Spencer is a resident of South Berwick, Maine. At all relevant times until November 16, 2009, Spencer was an agent and investment adviser representative of Edward D. Jones & Co., L.P. ("Edward Jones").
4. On or about September 26, 2008, Spencer purchased a \$75,000 Wachovia certificate of deposit in the account of Edward Jones's clients Robert and Winifred Ray ("the Rays") without first obtaining the consent of the Rays. The Rays subsequently learned of the purchase.
5. On September 29, 2008, Wachovia and Citigroup announced an FDIC-assisted bid by Citigroup to purchase Wachovia's banking business. This announcement was made amidst widespread concern that Wachovia might fail and present a systemic risk to the financial system. Wachovia ultimately was purchased by Wells Fargo and not Citigroup.
6. Also on or about September 29, 2008, after learning of Wachovia's financial difficulties, the Rays demanded that Spencer undo the unauthorized purchase of the Wachovia certificate of deposit in their account.
7. On four separate occasions, Spencer made requests to Edward Jones to cancel the trade. In the first request, Spencer, without disclosing that the transaction had been unauthorized, stated that the Rays had changed their mind regarding the purchase. Edward Jones denied this request. Spencer then made a second request to cancel the

trade, this time stating "wrong person/wrong account." This was denied by Edward Jones on the basis that it lacked sufficient information. Spencer then made a third request to cancel the trade, explaining this time that he had mistakenly entered the order in the Rays' account instead of the account of another client, Rita Davis. This too was denied. Each of Spencer's explanations was false.

8. Spencer then sought the assistance of Lisa Monachella ("Monachella"), his branch manager. Spencer falsely told Monachella that he had inadvertently placed the trade in the wrong account. Monachella approved the correction of the certificate of deposit to Davis's account at no loss to the Rays.
9. During an on-site examination of Spencer's branch office of Edward Jones on October 29, 2008, Spencer falsely told Office of Securities examiners that he had purchased the certificate of deposit for the Rays only after speaking with Mr. Ray about it.
10. During a deposition conducted at the Office of Securities on October 22, 2009, Spencer falsely represented that he had told Monachella the "whole story," including the fact that he had purchased the certificate of deposit for the Rays without their authorization.
11. In effecting the Davis transaction, Spencer did not disclose to Davis the following material facts:
 - a. Davis was purchasing the certificate of deposit at par even though it was trading at less than par;
 - b. The purchase was being effected to help Spencer undo an unauthorized transaction in another account without cost to Spencer or the other account holders; and
 - c. The Wachovia certificate of deposit carried with it the risk that Wachovia would fail, which could have negative consequences for Davis notwithstanding the presence of FDIC insurance – a risk that could be avoided by purchasing a certificate of deposit issued by a different entity.
12. In addition to placing the unauthorized trade in the Rays' account, Spencer exercised discretionary authority in the accounts of Davis and a third client, Charles Cavaris ("Cavaris"). However, Spencer falsely denied in his deposition using discretion in the Davis and Cavaris accounts. Even after giving this testimony and after being disciplined by Edward Jones for using discretion, Spencer continued to exercise discretion in Davis's account.
13. Spencer's exercise of discretion in client accounts was done without written client authorization and in violation of an Edward Jones prohibition of discretionary trading.
14. Edward Jones required Spencer to pay a total of \$4,500 in fines and client compensation for his conduct in connection with the Ray and Davis transactions and for making misrepresentations to the firm and the Office of Securities.

15. On November 16, 2009, Spencer was terminated by Edward Jones for again exercising unauthorized discretion in Davis's account in October and November of 2009.

II. CONCLUSIONS OF LAW

1. The Maine Uniform Securities Act grants authority to the Securities Administer to take disciplinary action against a licensed person who has engaged in "unlawful, dishonest, or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business." 32 M.R.S.A. § 16412(4)(M). Under this authority, the Securities Administrator can order several types of penalties and conditions, including barring a licensee from certain activities and associations and imposing conditions and limits on licenses if the Securities Administrator finds that the order is in the public interest. 32 M.R.S.A. § 16412(2) & (3).

A. Unauthorized Discretionary Trading

2. Rule Chapter 504(8) lists practices that are considered to be "dishonest or unethical" under 32 M.R.S.A. § 16412(4)(M) if committed by a broker-dealer or agent. Among the "dishonest or unethical practices" listed are "[e]ffecting a transaction in a customer's account without authority to do so," and "[e]xercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer . . ."
3. Rule Chapter 515(14) similarly identifies unauthorized discretionary trading by an investment adviser or investment adviser representative as a "dishonest or unethical" practice under 32 M.R.S.A. § 16412(4)(M) if committed by an investment adviser or investment adviser representative.
4. Spencer engaged in "dishonest or unethical practices" under 32 M.R.S.A. § 16412(4)(M) and Rule Chapters 504 and 515 by effecting an unauthorized transaction in the Ray account, and by exercising discretionary authority without written client authorization in the Ray, Cavaris and Davis accounts.

B. Recommending an Unsuitable Investment

6. Another practice designated by Rule Chapter 504(8) as "dishonest or unethical" under 32 M.R.S.A. § 16412(4)(M) if committed by a broker-dealer or agent is "[r]ecommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer . . ."
7. Rule Chapter 515(14) similarly identifies the recommendation of unsuitable transactions by an investment adviser or investment adviser representative as a "dishonest or unethical" practice under 32 M.R.S.A. § 16412(4)(M).
8. Spencer engaged in "dishonest or unethical practices" under 32 M.R.S.A. § 16412(4)(M) and Rule Chapters 504 and 515 by recommending an unsuitable transaction to Davis.

C. Fraud or Deceit

9. Rule Chapter 504(8) further states that a broker-dealer or agent engages in "dishonest or unethical practices" under 32 M.R.S.A. § 16412(4)(M) by:

Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative; or employing a device, scheme or artifice to defraud, making an untrue statement of material fact, omitting a material fact necessary to state in order to make other statements not misleading, or engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

10. Spencer engaged in "dishonest or unethical practices" under 32 M.R.S.A. § 16412(4)(M) and Rule Chapter 504 by engaging in acts, practices, or a course of conduct that operated as a fraud or deceit upon Davis, including failure to disclose material facts.

D. Conclusion

11. Because Spencer engaged in "dishonest or unethical practices" under 32 M.R.S.A. § 16412(4)(M) and Rule Chapters 504 and 515, the Securities Administrator is authorized to take disciplinary action against Spencer, including imposition of a bar order and imposing limits and conditions on Spencer's licensure. 32 M.R.S.A. § 16412(2) & (3).
12. This Consent Order is in the public interest because it will tend to correct Spencer's behavior and deter similar misconduct by Spencer and others in the future.

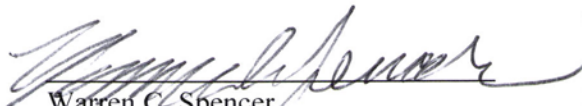
ORDER

1. Spencer is barred from acting as an investment adviser, obtaining an ownership interest in an investment adviser, or associating with any issuer, broker-dealer, or investment adviser in Maine for a period of nine months, commencing with his termination on November 16, 2009, by Edward Jones and continuing until August 16, 2010.
2. Should Spencer apply to become licensed in Maine as an agent, investment adviser, or investment adviser representative on or after August 16, 2010, any license issued shall be subject for a two-year period to the following restrictions:
- a. Spencer will not act in any principal, supervisory, or managerial capacity for a broker-dealer or investment adviser;
 - b. Within 15 days after learning of any investigation, proceeding, or written or oral customer complaint against him arising out of activities in the securities, insurance, or finance industry, Spencer will send written notification to the Office of Securities of the investigation, proceeding, or complaint;
 - c. Spencer will not exercise discretionary trading authority in the account of any Maine customer without the prior written consent of the Office of Securities;


- d. Should Spencer apply to become licensed in Maine as an agent of a broker-dealer, Spencer shall ensure that his broker-dealer will undertake supervision of him by a person who is licensed as an agent with the State of Maine and registered with FINRA as either a General Securities Principal or an Investment Company Products/Variable Contracts Limited Principal; and
 - e. Should Spencer apply to become licensed as an agent or investment adviser representative, Spencer shall: (1) inform the Office of Securities of the identity of the individual at the broker-dealer or investment adviser, as applicable, who is responsible for the exercise of his supervision and promptly inform the Office of any changes in the identity of his supervisor; (2) ensure that his supervisor contacts at least three randomly selected Maine clients per month to determine whether Spencer is exercising discretion; (3) ensure that his supervisor will review on a weekly basis all of his accounts and transactions to ensure that each transaction is suitable for the customer; (4) obtain the written agreement of his broker-dealer or investment adviser, as applicable, to the above supervisory requirements; and (6) provide a copy of any such written agreement to the Office of Securities.
3. Failure to adhere to the above restrictions will constitute grounds for the Securities Administrator to deny Spencer's license application, revoke Spencer's license or take any other available action.
4. In any future proceeding concerning Spencer licensure, except for an action for breach of this Consent Order, the Securities Administrator will take no further action adverse to Spencer based solely on the terms of this Consent Order, the allegations contained in the Notice of Intent or any other information known to the Office of Securities as of the date of this Consent Order, provided, however, that nothing in this Consent Order shall preclude the Securities Administrator from taking this Consent Order, the underlying allegations, and all other information into account in determining the proper resolution of licensing action based at least in part on other allegations and information.

Without admitting any of the above findings of fact or conclusions of law, Spencer, by signing below, agrees to the entry of this Consent Order and waives his right to a hearing and to judicial review.

Date: May 7, 2010


Warren C. Spencer

Date: May 12, 2010


Judith M. Shaw
Securities Administrator